

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

WP(C).No. 29320 of 2014 (L)

PETITIONER(S):

**SHERMIN FAIZAL, AGED 35 YEARS,
W/O.FAIZAL RAHIMAN, PERUNILATH HOUSE,
PANAYIKULAM, ALANGAD, ALUVA,
REPRESENTED BY HER POWER OF ATTORNEY
HOLDER M.K.SHANAVAS, AGED 67 YEARS,
S/O.KOCHU MEETHIAN, PERUNILATH HOUSE,
PANAYIKULAM P.O., ALANGAD, ALUVA, ERNAKULAM - 683 511.**

**BY ADVS.SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH**

RESPONDENT(S):

- 1. THE ALANGAD GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, NEERIKODE P.O., ALUVA,
ERNAKULAM - 683 511.**
- 2. THE VILLAGE OFFICER,
VILLAGE OFFICE, ALANGAD VILLAGE, PANAYIKULAM P.O.,
ALANGAD, ALUVA, ERNAKULAM - 683 511.**
- 3. THE AGRICULTURE OFFICER,
KRISHI BHAVAN, ALANGAD VILLAGE, ALANGAD P.O.,
ALUVA, ERNAKULAM - 683 511.**

*** ADDITIONAL R4 SUO MOTU IMPEADED.**

- 4. LOCAL LEVEL MONITORING COMMITTEE,
REP; BY ITS CONVENOR, ALANGAD PANCHAYATH**

*** IS SUO MOTU IMPEADED AS ADDITIONAL 4TH RESPONDENT.**

**R1 BY ADV. SRI.DEEPAK JOY.K.
R2 & R3 BY GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 29320 of 2014 (L)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1. TRUE PHOTOGRAPHS SHOWING THE PRESENT NATURE AND THE LIE
OF THE PROPERTY.**

**EXHIBIT P2. TRUE PHOTOSTAT COPY OF THE COMMUNICATION OF THE
1ST RESPONDENT TO THE PETITIONER, DATED 17.10.2014.**

**EXHIBIT P3. THE TRUE COPY OF THE REPRESENTATION OF THE PETITIONER
SUBMITTED BEFORE THE 1ST AND 3RD RESPONDENTS ON 28.10.2014.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msv/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 29320 of 2014

Dated this the 4th day of August, 2015.

JUDGMENT

Aggrieved by the rejection of the application for building permit, the petitioner has come up before this Court.

2. The petitioner alleges that 9.84 ares of property in Sy.No.328/9A of Alangad Village is a pucca garden land in a residential area, though the property is classified as Nilam in the revenue records. In the Data Bank prepared under the Kerala Conservation of Paddy Land and Wet Land Act, the same is classified as Nilam though there is no paddy cultivation in an around the area of the property for more than decades. The petitioner further alleges that he has taken steps to correct the entry in the data bank with respect to the property of the petitioner. The property lies contiguously with other properties wherein the petitioner's tarwad house situates and the petitioner submitted application before the first respondent for a building permit to construct a storage building. The

petitioner points out that the first respondent has to ascertain the nature of the property in which the building is proposed to be constructed before disposing the application. The first respondent mechanically rejected the application for the building permit submitted by the petitioner for untenable reasons.

3. Arguments have been heard.

4. The learned counsel for the respondent panchayath opposed the writ petition on the ground that the petitioner's property as per the data bank is described as Nilam. In answer to the said submission, the learned counsel for the petitioner inviting my attention to Ext.P1 photographs, submitted that his property is lying as a garden with aged coconut trees and at present, it is not lying paddy field. The learned counsel for the respondent panchayath further submits that unless necessary corrections are made in the data bank, the building permit cannot be granted.

5. At the time of hearing, the Local Level Monitoring

Committee, Represented by its Convenor, Alangad Panchayath is suo motu impleaded as additional 4th respondent and the learned Government Pleader took notice for the additional fourth respondent.

6. The decision of this Court in **Mohammed Abdul Basheer C.P. V State of Kerala and another** (2012 (3) KLT 86) lays down the principle that the present position of the land has to be taken into consideration and on ascertaining these facts, permission can be granted for construction.

7. It is settled position that the applicant can choose the best land suited for construction of his house (**Sunil v Killimangalam-Panjai 5th Ward Nellulpadaka Samootham** [2012 (4) KLT 511]). Only if there is cultivation presently, then it will be considered as cultivating paddy land so as to attract the provisions of the Kerala Conservation of Paddy Land and Wetland Act and Rules.

8. In **Jalaja Dileep v Revenue Divisional Officer** (2012(3) KLT 333), this Court observed that the description in

the title deed or in revenue records will not be crucial if the property is reclaimed already. The aforesaid legal positions settled by this Court escaped the attention of the authorities while rejecting the petitioner's application.

9. The learned counsel for the petitioner invited my attention also to the decision of this Court in **Adani Infrastructure & Developers Pvt. Ltd., Mumbai v. State of Kerala and Others** [2014 (1) KLT 774] wherein it was held that an authority which has been conferred with the functions of preparing a data bank with the details of the cultivable paddy land and wetland within its area of jurisdiction with the aid of modern technology and institutions of science and technology under sub-clause (1) of sub-section (4) of Section 5 could at any time, look into the ground realities and decide upon the suitability for prospective cultivation of such lands.

Therefore, this writ petition is allowed. Ext.P2 is quashed.

The additional fourth respondent is directed to consider

Ext.P3 after affording the petitioner an opportunity of being heard in the light of what has been stated above and grant permission to the petitioner if the committee is satisfied that the property is not fit for paddy cultivation at present, if the application is otherwise in order.

Once the fourth respondent issues the clearance, Ext.P3 application shall be considered by the respondent after conducting local inspection of the property regarding the present lie as well as the condition of the property of the petitioner and surrounding properties and issue order granting permit. This shall be done within a period of two months from the date of receipt of a copy of this judgment.

It shall be open to the petitioner to file separate application simultaneously before the revenue authorities concerned for getting the entry in the revenue records corrected.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.